

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-209383

**DATE:** October 19, 1982

**MATTER OF:** CWC Inc.

**DIGEST:**

A bid cannot be rejected as nonresponsive on the basis that the sureties' affidavits which accompanied the bid bond allegedly contained false information regarding the sureties' net worths. Responsiveness is determined from the bidding documents at bid opening, and if the bond as submitted is proper on its face, the bid is responsive. The matter instead is one of responsibility, and the acceptability of the sureties may be established any time before award.

CWC Inc. protests the proposed award of a contract to D. J. Barclay & Co., Inc. under Navy invitation for bids N62467-82-B-2441 to repair landplane hangars. CSC contends that the bid should be rejected as nonresponsive because the sureties' affidavits that accompanied the bid bond allegedly contained false information regarding the sureties' net worths. We summarily deny the protest because a surety's net worth is a matter of responsibility, not bid responsiveness.

Barclay's low bid of \$2,235,071 was secured by a bond guaranteed by two sureties. One surety included in the listing of its assets on Standard Form 28, Affidavit of Individual Surety, real property valued at \$2,320,000. The other surety listed real property valued at \$1,729,785. The sureties each listed the locations and values of the property in the space on Standard Form 28 for, according to the preprinted legend, the "Location and description of real estate of which I am sole owner." CWC argues that the bids are nonresponsive because public land records show that each surety actually owns the listed property jointly with his wife, and not as "sole owner."


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Responsiveness involves whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, so that acceptance will bind the contractor to meet all of the invitation's material terms and conditions. 49 Comp. Gen. 553, 556 (1970). The determination of responsiveness thus is made from the bid documents at the time of bid opening.

Barclay's bid bond was duly executed by two individual sureties whose affidavits indicated that they both had net worths at least equal to the penal amount of the bond, and was not otherwise defective on its face. The bid therefore meets the invitation's bonding requirement, and the bond is legally sufficient to establish the joint and several liability of the sureties in the event of default on the bid by Barclay. The bid thus is responsive. Clear Thru Maintenance, Inc., B-203608, June 10, 1982, 82-1 CPD 581.

The acceptability of a surety is a matter of responsibility and ordinarily may be established anytime before award. Clear Thru Maintenance, Inc., supra; Jets Inc., B-194017, April 16, 1979, 79-1 CPD 269. Award of a contract to Barclay necessarily will involve a determination that the firm is responsible, which would include a finding that the sureties are acceptable to the Navy. See Defense Acquisition Regulation § 1-902 (1976 ed.). Our Office does not review affirmative responsibility determinations except in cases of fraud or bad faith by procuring officials, or misapplication of definitive responsibility criteria. Freund Precision, Inc., B-208455, August 18, 1982, 82-2 CPD 155. CWC's protest affords no basis to conclude that either exception would apply here.

The protest is summarily denied.



Acting Comptroller General  
of the United States